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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE
LABORERS HEALTH AND WELFARE
TRUST FUND FOR NORTHERN
CALIFORNIA; BOARD OF TRUSTEES OF
THE LABORERS VACATION-HOLIDAY
TRUST FUND FOR NORTHERN
CALIFORNIA; BOARD OF TRUSTEES OF
THE LABORERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA; and
BOARD OF TRUSTEES OF THE
LABORERS TRAINING AND RETRAINING
TRUST FUND FOR NORTHERN
CALIFORNIA,

Plaintiffs,

v.

HALF MOON BAY GRADING & PAVING,
INC., a California corporation; and GARY LEE
GIOVANNONI SR., an individual,

Defendants.

Case No.: **CV 13 5970**

**COMPLAINT FOR DAMAGES FOR
BREACH OF COLLECTIVE
BARGAINING AGREEMENT, TO
RECOVER UNPAID TRUST FUND
CONTRIBUTIONS, FOR BREACH OF
FIDUCIARY DUTY AND FOR A
MANDATORY INJUNCTION**

[29 U.S.C. § 185(a) and 29 U.S.C. §§ 1109,
1132(g)(2), 114]

Now comes the Plaintiffs, hereinabove named, and for their causes of action against
Defendants, allege as follows:

JURISDICTION AND VENUE

1. This is an action for damages for breach of the collective bargaining agreement
described below, for recovery of unpaid trust fund contributions, for breach of fiduciary duty
and for injunctive relief. This Court has jurisdiction of the action under and pursuant to the

1 provisions of 29 U.S.C. § 185 (§ 301 of the Labor Management Relations Act of 1947, as
 2 amended) and 29 U.S.C. §§ 1132(a)(3) and 1132(e)(1) (§§ 502(a)(3) and 502(e)(1) of the
 3 Employee Retirement Income Security Act of 1974, as amended) (“ERISA”). The suit arises
 4 from the defendants’ failure to make trust fund contributions as required by its collective
 5 bargaining agreement, by the written trust agreements and by provisions of federal law.

6 2. Venue of the within action is properly laid in the U.S. District Court for the
 7 Northern District of California in that, under ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2),
 8 contributions are made to, and benefits are paid from, a corporate co-trustee bank in the
 9 Northern District of California.

10 PARTIES

11 3. The Laborers Health and Welfare Trust Fund for Northern California, Laborers
 12 Vacation-Holiday Trust Fund for Northern California, Laborers Pension Trust Fund for
 13 Northern California, and Laborers Training and Retraining Trust Fund for Northern California
 14 are the Plaintiffs herein. The Laborers Health and Welfare Trust Fund for Northern California,
 15 Laborers Vacation-Holiday Trust Fund for Northern California, Laborers Pension Trust Fund
 16 for Northern California, and Laborers Training and Retraining Trust Fund for Northern
 17 California (“the Trust Funds”) are trust funds organized under and pursuant to the provisions of
 18 §§ 302(c)(5) and 302(c)(6) of the Labor Management Relations Act of 1947, as amended,
 19 29 U.S.C. §§ 186(c)(5) and 186(c)(6). The Trust Funds were established through collective
 20 bargaining agreements between the Northern California District Council of Laborers and
 21 employer associations representing construction industry employers doing business in Northern
 22 California. The Trust Funds are employee benefit plans created by written trust agreements
 23 subject to and pursuant to §§ 3(3) and 3(37) of ERISA, 29 U.S.C. §§ 1002(3) and (37). The
 24 Boards of Trustees, as fiduciaries, are the plaintiffs, who sue on behalf of the Trust Funds.

25 4. Each of the Trust Funds is a third party beneficiary of the collective bargaining
 26 agreement described below.

27 5. At all times mentioned herein, each of the Trust Funds was an express trust
 28 created by a written trust agreement subject to and pursuant to § 302 of the Labor Management

1 Relations Act, 29 U.S.C. § 186, and a multi-employer benefit plan within the meaning of
2 sections 3 and 4 of ERISA, 29 U.S.C. §§ 1002, 1003.

3 6. The Trust Funds provide a variety of benefits for laborers, retired laborers and
4 other related covered employees on whose behalf contributions are made pursuant to collective
5 bargaining agreements. The duties of the Board of Trustees of the Trust Funds include ensuring
6 that employers who are signatories to said collective bargaining agreements comply with the
7 terms of those agreements with respect to payments and contributions to the Trust Funds.

8 7. Plaintiffs are informed and believe, and upon that ground allege, that at all times
9 material hereto defendant Half Moon Bay Grading & Paving, Inc. ("Half Moon Bay Grading")
10 was a California corporation with its principal place of business located in Half Moon Bay,
11 California. Plaintiffs are further informed and believe, and upon that ground allege, that Half
12 Moon Bay Grading is and has been an employer within the meaning of Section 3(5) and Section
13 515 of ERISA, 29 U.S.C. §§ 1002(5), 1145 and an employer in an industry affecting commerce
14 within the meaning of Section 301 of the LMRA, 29 U.S.C. § 185. Plaintiffs are informed and
15 believe, and upon that ground allege, that at all relevant times, defendant Gary Lee Giovannoni
16 Sr. ("Giovannoni") was and is the RMO/CEO/PRES of Half Moon Bay Grading and operated
17 and controlled Half Moon Bay Grading and that Giovannoni acted directly or indirectly in the
18 interest of Half Moon Bay Grading with respect to the plaintiff employee benefit plans.
19 Plaintiffs are informed and believe, and on that ground allege, that at all relevant times,
20 defendants constituted a single employer.

21 **FIRST CLAIM FOR RELIEF**

22 **(Breach of Collective Bargaining Agreement)**

23 8. Plaintiffs reallege and incorporate by reference, as though fully set forth, the
24 allegations contained in paragraphs 1-7 of this Complaint.

25 9. By virtue of its membership in the Engineering and Underground Contractors
26 Association ("EUCA"), Half Moon Bay Grading became bound to a written collective
27 bargaining agreement with the Northern California District Council of Laborers ("Laborers
28 Union") entitled the Laborers' Master Agreement For Northern California ("Master

1 Agreement"). In agreeing to be bound to the Master Agreement, defendant agreed to be subject
 2 to and bound by all provisions and conditions of the written Trust Agreements which
 3 established the trust funds. Pursuant to the provisions of the Master Agreement, defendant
 4 agreed to be bound by all terms relating to wages, hours and conditions of employment
 5 prescribed therein with the Laborers Union.

6 10. By virtue of the Master Agreement and written trust agreements, defendant
 7 promised and agreed that: (1) it would pay employee fringe benefit contributions into each Trust
 8 Fund in regular monthly installments commencing on or before the 15th day of the month
 9 immediately succeeding the month in which the employee's work was performed; (2) that in the
 10 event that any of said monthly installments were not paid in full on or before the 25th day of the
 11 month in which such contributions became due, it would pay interest on the delinquent
 12 contribution in the amount of 1.5% per month until paid in full, and would also pay the amount
 13 of \$150.00 for each delinquent contribution as liquidated damages, and not as a penalty; and
 14 (3) that if any suit with respect to any of said contributions or payments were filed against it, it
 15 would pay into said Trust Funds the attorneys' fees, costs, and all other expenses incurred in
 16 connection with such suit.

17 11. The Master Agreement between the Laborers Union and Half Moon Bay Grading
 18 has never been terminated.

19 12. Plaintiffs have performed all conditions, covenants and promises on their part to
 20 be performed in accordance with the terms and conditions of the Master Agreement and Trust
 21 Agreements. Plaintiffs have performed all conditions, covenants and promises on their part to
 22 be performed in accordance with the terms and conditions of the Master Agreement and Trust
 23 Agreements.

24 13. Within the past year, defendant materially breached and broke the aforesaid
 25 Master Agreement and trust agreements in the following respects:

- 26 a. by failing to pay all employee fringe benefit contributions reported into
- 27 each Trust Fund (reported, not paid) for the period September –
- 28

December 2012 and January 2013 in the principal amount of \$41,345.80; and

b. by failing to pay interest and liquidated damages on the unpaid and delinquent employee fringe benefit contributions (reported, not paid), for the period September – December 2012 and January 2013 in an amount to be proven at trial.

14. The aforesaid material breaches proximately caused damages to plaintiffs in the following approximate amounts, all according to proof at trial: for unpaid contributions (reported, not paid) in the principal amount of \$41,345.80 plus interest and liquidated damages in an amount to be proven at trial. Interest will continue to accrue at the rate of 1.5% each month during the pendency of this lawsuit.

15. Plaintiffs have incurred and will continue to incur attorneys' fees in the within action. Pursuant to the provisions of the Master Agreement and the trust agreements, Plaintiffs request that the Court award plaintiffs their attorneys' fees and costs incurred in the bringing of the within action.

WHEREFORE, plaintiffs pray for judgment as set forth below.

SECOND CLAIM FOR RELIEF

(Recovery of Unpaid Trust Fund Contributions)

(ERISA §§ 502(g)(2), 515)

16. Plaintiffs reallege and incorporate by reference, as though fully set forth, the allegations contained in paragraphs 1-15 of this Complaint.

17. ERISA Section 515, 29 U.S.C. § 1145, requires defendants to make such contributions to the plaintiff Trust Funds as are required under the terms of their collective bargaining agreement with the Union. Pursuant to the provisions of their trust agreements, plaintiffs are entitled to enforce defendant's obligations to make those contributions.

18. Defendants reported, but failed to pay, all employee fringe benefit contributions (reported, not paid) into each Trust Fund for the period September – December 2012 and January 2013 in the principal amount of \$41,345.80. Defendants are further obligated by the

provisions of the Master Agreement and the Trust Agreements to pay interest on unpaid contributions at the rate of 1.5% per month until paid and liquidated damages in the amount of \$150.00 for each month that defendants failed to timely report and pay all employee fringe benefit contributions into each Trust Fund.

19. Pursuant to the provisions of ERISA, Section 502(g)(2), 29 U.S.C. § 1132(g)(2), plaintiffs are entitled to the following statutory relief:

(a) Section 502(g)(2)(B): for contributions reported and not paid, an award of interest on the unpaid fringe benefit contributions at the rate of 1.5% per month, from the date of the delinquency, until the date of judgment, calculated to be \$4,033.32 through June 25, 2013; and

(b) Section (g)(2)(C): the additional award of an amount equal to the greater of (i) interest on the unpaid fringe benefit contributions at the rate of 1.5% per month, from the date of the delinquency, until the date of judgment or; (ii) liquidated damages under the Master Agreement and trust agreements of \$150.00 for each month that defendants failed to timely report and pay all employee fringe benefit contributions into each Trust Fund, calculated to be \$4,033.32 through June 25, 2013 for contributions not paid.

20. Plaintiffs have incurred and will continue to incur attorneys' fees in the within action. Pursuant to the provisions of § 502(g)(2)(D) of ERISA, 29 U.S.C. § 1132(g)(2)(D), plaintiffs request that the Court award plaintiffs their attorneys' fees and costs incurred in the bringing of the within action.

WHEREFORE, plaintiffs pray for judgment as set forth below.

THIRD CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

(ERISA §§ 409(a) and 502(a)(2))

21. Plaintiffs reallege and incorporate by reference, as though fully set forth, the allegations contained in paragraphs 1-20 of this Complaint.

///

1 22. Pursuant to the trust agreements establishing the Trust Funds, the funds' assets
2 include employee fringe benefits contributions that are required to be made to the Trust Funds.
3 Employee fringe benefit contributions that are due and become delinquent are therefore assets of
4 the Trust Funds.

5 23. Plaintiffs are informed and believe, and on that ground allege, that at all relevant
6 times, Giovannoni was the RMO/CEO/PRES of Half Moon Bay Grading and as such, exercised
7 authority or control over the payment of the employee fringe benefit contributions required to be
8 made to the Trust Funds by Half Moon Bay Grading, and that Giovannoni was a fiduciary as
9 defined by ERISA Section 3(21), 29 U.S.C. § 1002(21), and was therefore also a party in
10 interest as defined by ERISA Section 3(14)(A), 29 U.S.C. § 1002(14)(A). At all relevant times,
11 defendant Half Moon Bay Grading was an employer whose employees were covered by the
12 Trust Funds' plans and was a party in interest within the meaning of ERISA Section 3(14)(C),
13 29 U.S.C. § 1002(4)(C).

14 24. Plaintiffs are informed and believe, and on that ground allege, that defendant
15 Giovannoni's role in Half Moon Bay Grading's failure to make the employee fringe benefit
16 contributions that became due to the Trust Funds constituted a breach of his fiduciary duties, in
17 that he failed to act for the exclusive purpose of providing benefits to participants in the Trust
18 Funds' plans and their beneficiaries, and instead dealt with these assets of the Trust Funds in his
19 own interest and/or in the interest of Half Moon Bay Grading. Plaintiffs are authorized to seek
20 relief for this breach under ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2). As a result of said
21 breaches, defendant Giovannoni has become indebted to plaintiffs as follows:

- 22 a. by failing to pay all employee fringe benefit contributions reported
23 (reported, not paid) for the period September – December 2012 and
24 January 2013 in the principal amount of \$41,345.80; and
25 b. by failing to pay interest and liquidated damages on the unpaid and
26 delinquent employee fringe benefit contributions (reported, not paid), in
27 an amount to be proven at trial.
28

25. The aforesaid material breaches proximately caused damages to plaintiffs in the following approximate amounts, all according to proof at trial: for unpaid contributions (reported, not paid) in the principal amount of \$41,345.80 plus interest and liquidated damages in an amount to be proven at trial. Interest will continue to accrue at the rate of 1.5% each month during the pendency of this lawsuit.

26. Plaintiffs have incurred and will continue to incur attorneys' fees in the within action. Pursuant to the provisions of the Master Agreement and the trust agreements, plaintiffs request that the Court award plaintiffs their attorneys' fees and costs incurred in the bringing of the within action.

WHEREFORE, plaintiffs pray for judgment as set forth below.

FOURTH CLAIM FOR RELIEF

(Mandatory Injunction)

(ERISA § 502(g)(2)(E))

27. Plaintiffs reallege and incorporate by reference, as though fully set forth, the allegations contained in paragraphs 1-26 of this Complaint.

28. Pursuant to the terms and conditions of the Master Agreement and Trust Agreements, defendant Half Moon Bay Grading is required to allow the Trust Funds access to its books and records to determine the amount of trust fund contributions due and owing. Plaintiffs have, as one of their purposes, the obligation to ensure that contributions required to be made to the Trust Funds are fully and correctly made. The purposes of the respective funds are to provide health and welfare, vacation, pension and other benefits for laborers, retired laborers and other related covered employees on whose behalf contributions are made, which benefits are supported by such contributions, and to ensure that employers who are signatories to the collective bargaining agreement referred to herein comply with the terms of the agreement with respect to the payment of contributions to the Trust Funds.

29. Pursuant to ERISA § 502(g)(2)(E), 29 U.S.C. § 1132(g)(2)(E), the Court may award such other legal or equitable relief as the Court deems appropriate, and pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), plaintiffs are entitled to obtain appropriate

1 equitable relief for the breaches alleged herein. Plaintiffs seek a mandatory injunctive order of
 2 this Court ordering and requiring defendant Half Moon Bay Grading to permit plaintiffs' auditor
 3 access to the books and records of defendant Half Moon Bay Grading in order to permit
 4 plaintiffs to verify the precise amounts owed by defendants to the Trust Funds.

5 30. Plaintiffs seek a mandatory injunctive order from this Court because plaintiffs
 6 have no adequate legal remedy in that an audit of the books and records of defendant Half Moon
 7 Bay Grading is the only means to accurately verify the additional amounts owed by defendants
 8 to the Trust Funds.

9 WHEREFORE, plaintiffs pray for judgment as follows.

10 **RELIEF REQUESTED**

11 1. On the First Claim for Relief, for damages for breach of the collective bargaining
 12 agreement for judgment against defendant Half Moon Bay Grading: for unpaid contributions
 13 (reported, not paid) in the principal amount of \$41,345.80 plus interest and liquidated damages
 14 in an amount to be proven at trial and such other or further amounts as may be shown at trial, for
 15 costs of suit, attorneys' fees and for such other further relief as the Court may deem just and
 16 proper.

17 2. On the Second Claim for Relief, for recovery under ERISA § 502(g)(2),
 18 29 U.S.C. § 1132(g)(2), for judgment against defendant Half Moon Bay Grading as follows:
 19 (a) under Section 502(g)(2)(A) - for unpaid contributions (reported, not paid) in the principal
 20 amount of \$41,345.80, according to proof at trial; under Section 502(g)(2)(B) – an award of
 21 interest on the unpaid fringe benefit contributions at the rate of 1.5% per month, from the date of
 22 delinquency, until the date of judgment, calculated to be \$4,033.32 as of June 25, 2013; and
 23 under Section 502(g)(2)(C) – the additional award of an amount equal to the greater of
 24 (i) interest on the unpaid fringe benefit contributions at the rate of 1.5% per month, from the
 25 date of delinquency, until the date of judgment; or (ii) liquidated damages under the Master
 26 Agreement and trust agreements of \$150.00 for each month that defendant failed to timely
 27 report and pay all employee fringe benefit contributions into each Trust Funds, calculated to be
 28 \$4,033.32 as of June 25, 2013 and such other or further amounts as may be shown at trial, for

1 costs of suit, attorneys' fees and for such other further relief as the Court may deem just and
2 proper.

3 3. On the Third Claim for Relief, for breach of fiduciary duty under ERISA
4 § 409(a), 29 U.S.C. § 1109(a), for judgment against defendant Giovannoni for (a) for unpaid
5 contributions (reported, not paid) in the principal amount of \$41,345.80 plus interest and
6 liquidated damages in an amount to be proven at trial and such other or further amounts as may
7 be shown at trial, for costs of suit, attorneys' fees and for such other further relief as the Court
8 may deem just and proper.

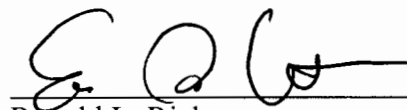
9 4. On the Fourth Claim for Relief, that defendant Half Moon Bay Grading be
10 compelled to forthwith submit to an audit by an auditor selected by plaintiffs, which audit is to
11 be conducted at the premises of defendant during business hours, at a reasonable time or times,
12 and to allow said auditor to examine and copy such books, records, papers and reports of
13 defendant Half Moon Bay Grading that are relevant to the enforcement of the collective
14 bargaining agreement and trust agreements, including, but not limited to, the following for the
15 period of January 2009 through the present:

16 California Quarterly Report of Wages, Form DE-6; Federal Tax
17 Forms W-3/W-2 and 1069/1099; Payroll Registers/Journals;
18 Individual Earnings Records; Source Records, including time
19 cards and time card summaries for all employees; contribution
20 reports for all trust funds; workers' compensation reports;
21 certified payroll reports; personnel records indicating job
22 classifications and hire/termination dates; cash disbursement
23 journal; vendor invoices; copies of subcontract agreements; cash
24 receipts journal; general ledger; job cost records; records of
25 related entities; and any other books and records that may be
26 necessary to complete the auditor's determination or provide
27 additional explanation.

28 DATED: December 27, 2013

BULLIVANT HOUSER BAILEY PC

By



Ronald L. Richman

Susan J. Olson

Edward D. Winchester

Attorneys for Plaintiffs

14342424.1

JS 44 (Rev. 12/12) and rev (1/15/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BOARD OF TRUSTEES OF THE LABOARERS

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

HALT MOOR BAS GRADING & PAVING

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

MEJ

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND
 ☐ SAN JOSE
 ☐ EUREKA

JS 44 Reverse (Rev. 12/12)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BOARD OF TRUSTEES OF THE LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA; BOARD OF TRUSTEES OF THE LABORERS VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; BOARD OF TRUSTEES OF THE LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; and BOARD OF TRUSTEES OF THE LABORERS TRAINING AND RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ronald L. Richman, Susan J. Olson and Edward D. Winchester
BULLIVANT HOUSER BAILEY PC
601 California Street, Suite 1800, San Francisco, CA 94108
Tel.: (415) 352-2700

DEFENDANTS

HALF MOON BAY GRADING & PAVING, Inc, a California corporation; and GARY LEE GIOVANNONI SR., an individual,
County of Residence of First Listed Defendant San Mateo

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. § 185(a) and 29 U.S.C. §§ 1109, 1132(g)(2), 114

Brief description of cause:

BREACH OF COLLECTIVE BARGAINING AGREEMENT, TO RECOVER UNPAID TRUST FUND CONTRIBUTIONS. FOR BREACH OF FIDUCIARY DUTY AND FOR A MANDATORY INJUNCTION

VII. REQUESTED IN COMPLAINT:

Case 0:13-cv-05970-MEJ Document 1 Filed 12/27/13 Page 14 of 14
CHECK WITH PLAINTIFF'S ACTION DEMANDS 10-51822
UNDER RULE 23, C.V.P.

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE December 27, 2013

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

() SAN FRANCISCO/OAKLAND

() SAN JOSE

() EUREKA